



April 11, 2001

Ms. Susan G. Conway
Vinson & Elkins
One American Center
600 Congress Avenue, Suite 2700
Austin, Texas 78701-3200

OR2001-1451

Dear Ms. Conway:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145874.

The Port of Houston Authority (the "authority"), which you represent, received a request for documents generated during the course of Arthur Andersen's most recent study conducted for the authority. You state that you have released much of the responsive information to the requestor. You claim, however, that other responsive information is excepted from disclosure under sections 552.024, 552.102(a), and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You argue that most of the information the authority seeks to withhold is excepted under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision 615 at 5-6. An agency's policymaking functions do include, however, administrative and personnel matters of broad scope that affect the governmental body's policy mission. Open Records Decision 631 at 3 (1995). Additionally, section 552.111 does not generally except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. Open Records Decision 615 at 4-5. This exception applies not only to internal memoranda, but also to memoranda prepared by consultants of a governmental body. Open Records Decision Nos. 462 at 14 (1987), 298 at 2 (1981).

You state that Arthur Andersen recently conducted a study to assist the authority in its deliberations concerning its compensation policies and practices. You further state that Arthur Anderson did not prepare a formal narrative report of the study, but that the substance and recommendations of the study are reflected in certain documents generated during the course of the study. You have submitted six tables that you claim contain Arthur Andersen's advice, opinions, and recommendations to the authority. Moreover, you assert that the information you seek to withhold implicates the authority's policymaking processes because the authority is using the information to establish an employee compensation policy. Therefore, we agree that portions of the information in the six submitted tables are excepted from disclosure based on section 552.111. We have indicated which portions of the information that you have highlighted may be withheld under section 552.111.

You also argue that the employee social security numbers in the submitted tables must be withheld pursuant to section 552.024. In actuality, it is section 552.117 of the Government Code that excepts from disclosure the social security numbers of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The authority must withhold an employee's social security number pursuant to section 552.117 only to the extent that the respective employee elected to keep this information confidential prior to the authority's receipt of the current records request. You state that all employees, except one, who are identified in the responsive documents have submitted written requests to the authority that their social security numbers and other personal information not be released to the public. Assuming that these requests were submitted to the authority *prior* to the authority's receipt of the current records request, we agree that you must withhold the social security numbers that you have highlighted.¹

We note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the authority pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the authority to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the authority, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information.

¹Because section 552.117 is dispositive, we need not address your other claimed exception.

Prior to releasing any social security number, the authority should ensure that the number was not obtained or maintained by the authority pursuant to any provision of law enacted on or after October 1, 1990.

To summarize: (1) the authority may withhold certain information in the submitted documents under section 552.111 as marked; (2) the authority must withhold the social security numbers for those employees that elected to keep such information confidential prior to the authority's receipt of the current request for information; and (3) before releasing the social security number of any employee that did not make a section 552.024 election prior to the authority's receipt of the current request for information, the authority should ensure that the social security number was not obtained or maintained by the authority pursuant to any provision of law enacted on or after October 1, 1990.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, he